

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

KENDALL LAMAR GARLAND, :
Plaintiff, :
v. : Civil Action No. 04-130J
LT. HORTON, :
Defendant :

Report and Recommendation

Recommendation

Plaintiff's motion to amend the complaint, docket no. 56,
and motion for Rule 60(b) relief, docket no. 58, should be denied.

Report

Plaintiff filed a complaint in this matter in 2004, which this court dismissed in 2004, and the dismissal of which was affirmed on appeal by the Court of Appeals for the Third Circuit in 2005. Since plaintiff has filed at least three complaints dismissed for failure to state a claim, he is subject to the three strikes rule of 28 U.S.C. § 1915(g). Plaintiff therefore has been filing motions to reopen his dismissed complaints, see also Garland v. Malinich, C.A. No. 04-153J (W.D.Pa.), in the hopes that he can obtain relief from §1915(g). In the instant case, plaintiff has, even after the conclusion of the appeal, filed a motion to amend his complaint, docket no. 58, and a motion purportedly under Fed.R.Civ.P. 60 to vacate the judgment, docket no. 56. Both should be denied for the reasons I stated in Garland v. Malinich, C.A. No. 04-153J: the motion to amend must be denied because a complaint cannot be amended under Fed.R.Civ.P. 15 after it has been dismissed. The Rule 60(b) motion should be denied because it does

not meet the criteria of any of the categories for relief from final judgment under Fed.R.Civ.P. 60(b).

Pursuant to 28 U.S.C. § 636(b)(1), the parties are given notice that they have ten days to serve and file written objections to this Report and Recommendation.

DATE: 31 March 2006

Keith A. Pesto
Keith A. Pesto,
United States Magistrate Judge

cc:

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